



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Institute of Standards and Technology**  
Gaithersburg, Maryland 20899-0001

July 27, 1998

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**JUL 27 1998**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Office of the Secretary  
Federal Communications Commission  
1919 M Street, Suite 222  
Washington, DC 20554

Dear Ms. Secretary:

The NIST Office of Standards Services is submitting the following comments on FCC 98-92, GEN Docket No. 98-68 NPRM. As a named participant in the subject process, NIST needs to ensure that the facts of our program are correct.

Under the current NVCASE operating procedures, described at 15CFR Part 286, Subchapter J, Para. 286.2(b)(2) Accreditation level, NIST can evaluate and accredit certification bodies directly only when (i) directed by U.S. law; (ii) requested by another U.S. Government agency; or (iii) requested to respond to a specific U.S. industrial or technical need, relative to a mandatory foreign technical requirement, if it has been determined after public consultation that (A) there is no satisfactory accreditation alternative available and the private sector declined to make acceptable accreditation alternative available and (B) there is evidence that significant public disadvantage would result from the absence of any alternative.

Under Para. 286.2(b)(3) Recognition level, NIST can evaluate and recognize accreditation bodies when (i) directed by U.S. Law; (ii) requested by another U.S. Government agency; or (iii) requested to respond to a specific U.S. industrial or technical need, relative to a mandatory foreign technical requirement, if it has been determined after public consultation that (A) there is no suitable alternative available and (B) there is evidence that significant public disadvantage would result from the absence of any alternative.

The proposed FCC rule states that NIST would accredit telecommunications certification bodies (TCBs). To date, NIST has not received any official request from FCC to establish such an accreditation program. FCC needs to make a formal request advising NIST as to which level it desires NIST to operate in support of this rule.

NVCASE prefers to operate at the recognition level rather than acting as an accreditor. Under the recognition scenario, NIST would evaluate accreditors conformance with ISO/IEC Guide 61. Accreditors would evaluate product certifiers for conformance with the generic criteria contained in ISO/IEC Guide 65. Additional specific criteria for the FCC requirements as covered by the NPRM, under parts 2 and 68, would also be included in an NVCASE recognition program to ensure adequate performance criteria for qualifying accreditors and TCBs. These actions are consistent with NIST's planned role as a "Designating Authority" under the U.S./EU MRA.

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**NIST**

If FCC requests that NIST operate at the accreditation level, NVCASE would evaluate product certifiers for conformance with the generic criteria contained in ISO/IEC Guide 65. Additional specific criteria for the FCC requirements as covered by the NPRM, under parts 2 and 68, would also be included in an NVCASE accreditation program to ensure adequate performance criteria for qualifying TCBs.

**The following address specific Paragraphs of the NPRM.**

### **III. Discussion - Para. 14, 16, 29 and 30.**

If the FCC requests that NIST operate at the recognition level, we suggest that Paragraph 14, Procedures for Designating TCBs be modified to reflect the fact that NIST would act at the recognition level to evaluate accreditors of product certifiers.

Para. 16 it is stated that "It would be difficult for the Commission or NIST to evaluate organizations outside the United States." NIST may under certain circumstances evaluate foreign entities. This activity is not burdensome, particularly if NIST is acting at the recognition level rather than the accreditation level. Suggest that the words "or NIST" be deleted.

Para. 29 states "We understand that EC designating authorities must meet the requirements of ISO/IEC Guide 61." Guide 61 applies to organizations that operate accreditation programs. Under the U.S./EU MRA, designating authorities are in many cases government agencies. These agencies do not normally act as accreditors, but designate private sector bodies to act on their behalf. Guide 61 therefore is not applicable to the activities of designating authorities under the U.S./EU MRA. No international (or other) consensus standard currently exists for bodies operating at the recognition level, which is where NVCASE and other designating authorities would normally operate.

Para. 30 second sentence. Change to read "NIST will designate Conformity Assessment Bodies in the United States for equipment that will be exported to Europe." Delete the words "through its National Voluntary Conformity Assessment System Evaluation program (NVCASE)."

### **Appendix A**

Section 2.960 (a). According to the rationale above clarification must be made as to whether NIST- NVCASE will "accredit" TCBs, or "recognize" accreditors who will in turn accredit TCBs. NIST will be the designating authority nominating TCBs based on information supplied by NIST recognized accreditors.

Section 2.962 (c ) Subcontracting

Item (1) Add to end of last sentence "... to perform the applicable testing."

Section 2.962 (d) Procedures for Designation

Item (1) According to the rationale above clarification must be made as to whether NIST-NVCASE will "accredit" TCBs, or "recognize" accreditors. Why, and to whom is the 30 day notice requirement intended?

Section 68.230(a). Same comment as for section 2.960(a).

Section 68.232 (c )(1) Same comment as for section 2.962(c)(1).

Section 68.232 (d)(1) Same comment as for section 2.962(d)(1)

Prior to developing the language for the final rule, FCC should provide NIST with a written request as to what type of program it would desire NIST to establish under these rules. Such a letter of request should be forwarded to Belinda Collins, Director OSS, NIST, Bldg. 820, Room 282, Gaithersburg, MD, 20899.

We trust that the above comments will be considered and any appropriate modifications made.

Sincerely,



Robert L. Gladhill  
Program Manager, NVCASE

cc: S. Malghan, NIST  
B. Collins, NIST  
M. Saunders, NIST  
A. Wall, FCC  
V. Paladini, FCC  
J. Knapp